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Sent: Tuesday, May 12, 2015 7:27 AM
To: Purdy, Angeline (ENRD); Sweeney, Stephen; Owens, Kim; Shaw, Hanh
Subject: DENVER-#512642-v1-aewc_28j_letter_final.docx
Attachments: DENVER-#512642-v1-aewc_28j_letter_final.docx

Angie, here is the final on the letter. Kim...could you send Angie a pdf of Table 6 with the AR bates number at the bottom? I have a copy but marked it up and I'm going to be running for the airport shortly.

Thanks,

Dan



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May 12, 2015

Hon. Molly C. Dwyer
Clerk of Court
The James R. Browning Courthouse
95 7th Street
San Francisco, CA 94104

Re: *Alaska Eskimo Whaling Commission v. EPA*, No. 13-70633 (9th Cir.)

Dear Ms. Dwyer:

We represent Respondent United States Environmental Protection Agency in the above-referenced petition for review, which is set for oral argument in Anchorage on May 13, 2015. We submit this letter pursuant to Federal Rule of Appellate Procedure 28(j) and Circuit Rule 28-6.

We have discovered a misstatement in our brief that we would like to bring to the Court's attention before oral argument. At page 27 of Respondent EPA's brief, citing EPA's Ocean Discharge Criteria Evaluation ("ODCE"), Excerpts of Record 302, we state that "EPA's modeling and analysis of the behavior of discharged materials further demonstrated that even under worst-case conditions all discharges are expected to dilute to a ratio of 600:1 within 100 meters of the discharge point." At page 51 of the brief we quote the Response to Comments document at ER 107 to the effect that non-contact cooling water temperatures would "dissipate and achieve complete mixing within 100 meters of the discharge location" (Non-contact cooling water is a discharge under the permit at issue).

Both the record and our brief were incorrect, in that the modeling we cited was for drilling-related effluents, versus non-contact cooling water. However, contrary to Petitioner's assertion at page 27 of its brief, the record does include modeling of the impacts of cooling water. Petitioner attached pages from EPA's "Technical Memorandum" as Further Excerpts of Record ("FER") 1-12. Section 1.0, "Introduction," FER1, explains that the model was used to simulate the water column transport and dilution of a wide range of discharges, including cooling water. Section 3.0, "Non-Drilling Fluid Discharges," FER5, describes modeling for dilution factors using a range of flows, depths, and current speeds, including a 45,000 barrel per day flow rate specifically for cooling water. Section 4.0, "Temperature," FER 5, describes modeling for temperature effects of cooling water discharges. Petitioner did not attach Table 6 of the Technical Memorandum, EPA_NPDES_AR_000695-98, "Non-Drilling Fluid Water Discharge Cases," which describes

modeling runs relating to non-contact cooling water as well as other non-drilling fluid waste streams. We attach a copy of Table 6 with this letter.

Respectfully submitted,

/s/ Daniel Pinkston

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